

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 16, 2001
at 3:30 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Melissa Rasmussen, Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 605, 3/12/01
HB 513, 3/12/01
HB 599, 3/12/01
HB 457, 3/12/01
Executive Action: HB 459
HB 473

HEARING ON HB 605

Sponsor: REP. DOUG MOOD, HD 58, Seeley Lake

Proponents: Rex Svoboda, Missoula Chamber
Neal Marxer, Smurfit-Stone Container Corp.
Don Williams, Self
Ellen Porter, Louisiana Pacific
Steve Brown, John R. Daily, Inc.
Webb Brown, MT Chamber
Don Allen, WETA
Dexter Busby, MT Petroleum Association
Cary Hegreberg, MT Wood products Association
Charles Brooks, Billing's Chamber
Jim Kuffel, Bolt & Anchor Supply, Inc.

Opponents: Linda Stoll, MT Local Health Officers
Jean Curtiss, Missoula County Commissioner
Jim Carlson, Missoula City County Health Dept.
Martha McClain, Deputy County Attorney
Ellen Leahy, Missoula City County Health Dept.
Joan Miles, Lewis & Clark Health Department
Joseph Russell, Flathead City Council Health

Opening Statement by Sponsor:

REP. DOUG MOOD, HD 58, Seeley Lake, prefaced his remarks by handing out a clarification letter to HB 459 **EXHIBIT (nas60a01)**. He opened by stating the bill is a result of a Missoula County situation. He asserted the purpose of HB 605 is to clarify. If stricter air quality standards are going to be established, that are more stringent than state standards, there must be adequate public comment. He pointed out that the language on page four outlines the process a local health board has to go through if they create standards that are more stringent than the states. He declared the language on pages two and three strike old language to match the new language on pages four and five. He stated that the main difference is changing the time frame from twelve months to six months for a board to make a determination.

Proponents' Testimony:

Rex Svoboda, Missoula Chamber, spoke in favor of the bill and submitted written testimony **EXHIBIT (nas60a02)**.

Neal Marxer, Smurfit-Stone Container Corporation, spoke in favor of the bill and submitted written testimony **EXHIBIT (nas60a03)**.

Don Williams, Representing himself, informed the committee he has served on numerous task forces that have dealt with these types of issues. He stated the bill provides for a fair and open process. He charged that businesses have a right to a fair process based on science and facts. He urged the committee to clarify a process that is easily skewed by business and industry.

Ellen Porter, Louisiana Pacific, spoke in favor of the bill and submitted written testimony **EXHIBIT (nas60a04)**.

Steve Brown, John R. Daily, Inc., told the committee that the bill provides clarity about procedural rules that local health departments must follow when they adopt or revise their air quality rules. He charged that the bill does not change the substance of any air quality program. The bill is simple and straight forward. He proclaimed that the bill provides the possibility to petition laws that are in place. It provides procedural protection, and does not repeal current rules. He declared that the bill provides a better defined process along with an accountability standard.

Webb Brown, MT Chamber, stated that the bill increases the opportunity for businesses to be involved in issues that affect their livelihood. He added that the Chamber does not typically get involved in local issues unless they are asked to by their members.

Don Allen, WETA, charged that the bill is important for public participation. He stated at the state level this is the way business is done, it should be the same at the local level. He declared that public process provides as much predictability and certainty as possible.

Dexter Busby, MT Petroleum Association, added his support for the bill.

Cary Hegreberg, MT Wood Products Association, echoed the comments made by **Mr. Allen**. He added that public involvement is a good thing. He charged that people have the right to know about issues that concern them.

Charles Brooks, Billing's Chamber, spoke in favor of the bill.

Jim Kuffel, Bolt & Anchor Supply, Inc., stated that he has watched the demise of industry throughout the state. He proclaimed that the bill would level the playing field and give industry a voice.

Opponents' Testimony:

Linda Stoll, MT Local Health Officers, handed out letters from individuals who oppose the bill **EXHIBIT (nas60a05)**. She commented that the bill is a Missoula issue. She stated that it would be bad policy to change state law to accommodate one cities issues.

Jean Curtiss, Missoula County Commissioner, spoke in opposition to the bill and submitted written testimony along with letters, articles and a resolution **EXHIBIT (nas60a06)**.

{Tape : 1; Side : B}

Jim Carlson, Missoula City County Health Dept., walked the committee through visual examples of the process required by law in order to pass air quality standards. The main areas he addressed were; adopt local air pollution regulations and review local advisory council and State Board of Environmental Review. He stated that after the public process has been completed a large document that lists all of the findings is published. He charged that he does not know of a more stringent process. He declared that the stringent rules have cut down violations to zero in a few air quality standards. He stated there are a few MAPA requirements that they are not required to do, justification document, interested parties list and written response requirements. He argued the problem with MAPA requirements is submitting references to the Secretary of State. Adopting the language would throw the local and state programs out of sync. He argued that the bill does increase the requirements for passing laws more stringent than federal laws at both the state and local level. He stated that the language in the bill is not the same as the current law for regulations passed by the Board of Environmental Review. He warned if the regulations are going into the Federal Required Air Pollution Plan in addition to all of the things addressed; they have to be approved by the Governor and the EPA. He promised the committee that Missoula has already adopted a plan to create a more stringent review process. He stated that the MAPA portion of the bill is not appropriate. He charged that local governments should have the same standards that HB 521, passed several sessions ago, applied to all units of state government.

Martha McClain, Deputy County Attorney, spoke in opposition to the bill and submitted written testimony **EXHIBIT (nas60a07)**.

Ellen Leahy, Missoula City County Health Dept., charged that the bill is a Missoula issue. She stated that the bill would effect re-designation. It would upset what local governments have worked for. She stated that once they apply they would have to

prove for two decades into the future that they can comply with air quality standards. She argued that allowing the agency to look five years back will affect their ability to comply for the next twenty years. She stated that the bill changes the state language. She argued that they do comply with the existing stringency language. She asserted what has been proposed changes the rules and creates ambiguity. She charged that fixing the dispute into law would lead to litigation.

Joan Miles, Lewis & Clark Health Department, stated that she was opposing the bill as written. She expressed that air districts in the state are not trying to become attainment areas, they already are. She declared that the law as written makes it virtually impossible to do anything without a comparable federal guideline. She was concerned specifically with the language on page four. She gave the example of calling a hotline to see if it's okay to burn. That particular guideline does not have a federal standard to compare it to. She stated that to ensure the same justification standards apply to air quality as septic systems the language needs to be added. She charged that the bill in its current state does not accomplish that specific goal. She stated that substantive to MAPA is not well defined. She warned that new language would confuse the issue.

Joseph Russell, Flathead City Council Health, warned the committee against imposing regulations on other districts and communities when the bill is clearly a Missoula problem.

Informational Testimony:

Jim Madden, DEQ, informed the committee that he would be available to answer questions.

{Tape : 2; Side : A}

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA inquired why local governments are excluded from certain MAPA restrictions. **Mr. Madden** told her that many regulations are not applicable to local agencies. Most of the regulations are applicable only to the state. **SEN. COCCHIARELLA** questioned what would happen if the language was adopted on page four. She questioned how a state would handle a petition that came up during the retroactive status. **Mr. Madden** stated that the particular provisions would require the state or local board to repeal the ordinance or require the governing body to make the stringency findings. He stated the provision is a look back provision. It allows people to come in after the effective date of the act and look at ordinances that were passed

earlier and require them to be justified under the act. **SEN. COCCHIARELLA** asked if these situations would cause a fiscal impact. **Mr. Madden** declared that there would have to be a public hearing. **SEN. COCCHIARELLA** wondered if under the bill, to adopt MAPA the state would have primacy over local issues. **Mr. Madden** stated primacy is not an accurate word. But adopting MAPA would take away some local control. He informed her under the current Public Participation and Government Act local agencies still have a baseline for public participation.

SEN. COCCHIARELLA expressed her concern about the language on line 11 page four. She asked how that would affect burning laws in Missoula. **Ms McClain** informed her that they have tried to create different standards to make their provisions work, such as hotlines. **SEN. COCCHIARELLA** questioned if the language included the rule of no fireplaces. **Ms McClain** said that it would include that. She confessed she did not know if there was a comparative federal guideline.

SEN. COCCHIARELLA asked what happened to create the need for this legislation. **Mr. Marxer** told her it was created because of the way certain businesses were treated when the guidelines were modified. He stated that once the public got involved the process changed. He argued that the process needs to be defined to avoid future conflict. **SEN. COCCHIARELLA** asked if he participated in the recent proposals. He informed her that there is no defined procedure. **SEN. COCCHIARELLA** asked him to clarify if he was talking about Missoula county or the state. **Mr. Marxer** said for the state. He expressed that local boards need a procedure so they are allowed to participate in the public process. **SEN. COCCHIARELLA** asked if he was aware of how MAPA works and it's requirements. **Mr. Marxer** stated he was not familiar with MAPA.

SEN. BILL TASH clarified that a board member is appointed for three years. He asked how many members serve on the advisory council. **Ms CURTISS** told him the council has nine members. He asked if they could be reappointed. She said yes.

SEN. COCCHIARELLA asked how **Ms Porter** participated on the council. **Ms Porter** stated that she serves on the Air Quality Council. **SEN. COCCHIARELLA** asked if there was an industry representative on the council. **Ms Porter** informed her that there is no one from industry on the council.

SEN. GLENN ROUSH asked **REP. MOOD** to address the concerns about local control in his closing.

Closing by Sponsor:

REP. MOOD claimed that the bill raises a policy issue that needs to be decided by the legislature. He questioned if there should be predictability with these types of issues, that is what the body must decide. He gave examples of Missoula air quality standards, such as not allowing a diesel truck to idle longer than twenty minutes. He also pointed out contradictions within those standards. He challenged that the contradictions arise when there is a lack of public participation. He stated that the bill clarifies when a local standard is more stringent than what's on the state books the public must be allowed to participate in the process. He observed, it is strange the people who do the regulating do not want the public to participate.

HEARING ON HB 513

Sponsor: **REP. DAN FUCHS, HD 15, Billings**

Proponents: **Peggy Trenk, MT Association of Relators**
 Andy Skinner, HPOA
 Clayton Fiscus, Self
 Byron Roberts, MT Building Association
 Al Littler, Billings Association of Relators
 Stuart Doggett, MT Manufactured Housing & RV
 Association

Opponents: **Vivian Drake, Self**
 Terry Murphy, Lake County
 Jim Carlson, Missoula City County Health Dept.
 Joan Miles, Lewis and Clark Health Dept.
 Spencer Shropshire, Lewis & Clark Water Quality
 Board
 Linda Stoll, MT Local Health Officers
 Tim Davis, MT Smart Growth Coalition

Opening Statement by Sponsor:

REP. DAN FUCHS, HD 15, Billings, stated the bill recognizes that as a source of nitrate degradation individual septic systems are non-significant. He declared that the bill does not eliminate requirements under the current rules that a developer test all existing wells for nitrate specific conductivity and total coliform bacteria. The bill does not change water quality; it recognizes that single family septic systems on one plus acres are non-significant to nitrate degradation in the state.

Proponents' Testimony:

Peggy Trenk, MT Association of Relators, charged that science does not warrant the level of regulation that is being applied. She argued that the unnecessary requirement is costing home owners more than is justified. She informed the committee that her association asked **Jim Taylor, Tech-Net, LCD**, to come and inform the committee about the science of the issue.

Informational:

Jim Taylor, Tech-Net, LCD, informed the committee that he is a registered engineer in Montana and California. He stated he was a member of the non-degradation task force which reviewed subdivision rules. He told the committee that mixing zones are fraught with cost inadequacies. He stated that there is a standard for the level of nitrates that occur in groundwater. He declared that the instillation of a septic tank is limited through the non-degradation process to a nitrate limitation at the end of a mixing zone. He argued that it is hard to base a program on nitrates because they are hard to identify. The assumption is that a septic tank will deliver so many parts per million of nitrate directly into the ground water. Engineers are expected to assume at least fifteen different variables that determine how much of the sewage affluent is diluted to the extent that at the end of the mixing zone it will achieve regulatory compliance. He stated even the verification process is based on assumption. He argued that nitrates need to be studied. He maintained that there is not adequate support to prove high levels of nitrates in drinking water. In 1951 the Walton study was conducted. 48 states studied illnesses associated with drinking water. Infants are the main individuals affected by high levels of nitrates in drinking water. He sighted statistics concluded from the study.

{Tape : 2; Side : B}

He informed the committee when a subdivision is trying to get approved they have to show that nitrate levels will not exceed five parts per million in the ground water. He stated in 1975 there were nearly 1.9 million infant deaths, none were associated with nitrate levels. He expressed nitrate levels in drinking water are overblown. He charged that using nitrates to identify a septic tank problem may have validity. However, those numbers can be manipulated. He warned that nitrates have led groundwater harm identification astray. He charged that nitrates are not a good indicator of a public health issue. He stated the process engineers have to go through involving a mixing zone are difficult to justify because of the numerous assumptions. He

professed, as engineers it is hard to sign off on a project when they know most of what they're saying is an assumption. He confessed that engineers can manipulate the numbers to make the process work in order to satisfy the rules. He proclaimed it is easier to achieve compliance when there is a large amount of groundwater flow beneath a septic tank. He stated that nitrates have led testing astray. They have masked public health issues and forced engineers into doing land development things that are not in the best interest of growth policy. He argued that nitrates have put engineers in a position of compromising their profession. He stated that his issue with the bill is that it does not eliminate nitrate testing.

Proponents' Testimony:

Andy Skinner, HPOA, alleged that the problem is not nitrates in septic tanks, but in the ground. He offered the example of the Warren School. In that particular subdivision the engineer found that cattle were creating more nitrates than the subdivision. He declared that the costs associated with nitrate data collection are not reasonable.

Clayton Fiscus, Representing himself, charged that the implementation of nitrate testing for single family homes was based on false assumptions and misleading facts. He walked the committee through a packet of information siting sources and data about nitrate **EXHIBIT (nas60a08)**.

Byron Roberts, MT Building Association, stated nitrate testing on larger than one acre is unnecessary and costly.

Al Littler, Billings Association of Relators, offered that past clients have been forced to put in alternative forms of septic tanks. He charged that nitrate levels were not high enough to endanger health, but high enough to require a tripling of the septic cost.

Stuart Doggett, MT Manufactured Housing & RV Association, expressed the importance of manufactured housing in the state. He charged that the bill would be beneficial in providing affordable housing in the state.

Opponents' Testimony:

Vivian Drake, Representing herself, informed the committee that she was a previous supervisor for the Lewis and Clark County Water Quality Protection District. She participated in a septic tank study in 1990. She conducted the same study in 1994 and

1996. Her results showed when the number of septic tank installations for single family dwellings increased, nitrates in groundwater increased. She stated that high nitrate levels prevented families from purchasing homes. The local health department investigated the contamination, and found septic tanks to be the cause. She charged that nitrate testing is inexpensive. She expressed her concern for the current levels of nitrates in the Montana Code, 75% of the legal drinking water limit of ten milligrams per liter. She informed the committee she is currently writing a journal article that uses data from three nitrate testing sites in the Helena area. She charged each test showed increased levels of nitrate in the groundwater over the past ten years. She argued the proposed changes are not in the public's best interest. She judged that subdivisions of one acre or more have had a negative impact on the quality of groundwater. She warned the committee that supporting the bill would remove an important safeguard for the individual home buyer. She submitted written testimony in opposition to the bill on behalf of **Robert Horne, City-Co. Planning Director** **EXHIBIT (nas60a09)**.

Terry Murphy, Lake County, submitted a letter in opposition to the bill from Lake County **EXHIBIT (nas60a10)**. He acknowledged that the current method of nitrate testing is not perfect. The subdivision task force wants to find a way that works. He argued there are elevated levels of nitrate in the state.

{Tape : 3; Side : A}

He charged if there is control of the nitrate levels, there will be control of the virus. He stated it is not difficult to create inexpensive systems to control nitrates. Technology for the system sells for around \$10,000 per unit. He proclaimed that nitrate has not stopped a subdivision development. There is the technology to reduce nitrates. He expressed his concern that opponents discussion of 200 parts per million is okay, the clean water standard is currently ten parts per million. He charged that according to SAVADO nitrate levels at excess of ten parts per million can cause Blue Baby Disease. He urged the committee to allow the citizens group to clean up the nitrate issue.

Jim Carlson, Missoula City County Health Dept., stated the national standard for drinking water is ten. It is regulated at that standard to protect beneficial use. He stated that the committee is being asked to ignore previous legislation and make an exception for subdivisions. He maintained that following current protections would eliminate future expense. He gave the example of the Linda Vista Subdivision. He suggested that the

committee develop a resolution to allow the DEQ and other groups to study the issue.

Joan Miles, Lewis and Clark Health Dept., urged the committee to look at the court case between MEIC vs DEQ. In the case the court found unconstitutional a blanket exemption of non-degradation from an activity that caused pollution. The case violated the right to a clean and healthful environment. She encouraged the committee to allow the DEQ to solve the problem.

Spencer Shropshire, Lewis & Clark Water Quality Board, proclaimed that nitrates are used like a canary in a mine. He narrated that the legislature in 1907 passed a water quality bill, it was rescinded in 1911. After that, typhoid became the leading cause of death until the bill was reinstated in 1917. He charged that the current statute is important to maintaining public health.

Linda Stoll, MT Local Health Officers, submitted written testimony on behalf of **Joseph Russell, Flathead City-County Health Dept.**, **EXHIBIT**(nas60a11).

Tim Davis, Smart Growth Coalition, added that the number of septic systems is growing in the state. This is a public health issue, that will only gain momentum over time.

Questions from Committee Members and Responses:

SEN. ROUSH asked if passing the bill would create a problem within the DEQ. **Bonnie Lovelace, DEQ**, exclaimed that there are issues in state water with nitrates and nutrients in general. She stated that nutrients have impaired numerous bodies of water. When nitrates from septic tanks hit surface water it infects a broad range of areas.

SEN. LORENTS GROSFIELD questioned if a well could not be within 500ft of a septic tank. **Mr. Taylor** clarified that it was within 100ft. **SEN. GROSFIELD** wondered if the placement of the well and septic tank made a difference. He inquired about a secluded area as opposed to a 500 acre piece of land. **Mr. Taylor** clarified that was a density issue and a cumulative issue. He reminded him that his comments were directed toward using nitrate testing in a way that does not compromise public health. He declared that type of testing is not an appropriate standard to use. **SEN. GROSFIELD** inquired about using nitrates as a canary in a mine. **Mr. Taylor** declared that is a long standing argument. The process takes an initial sample of nitrate, then another one after development. Nitrate levels are generated from several different levels. He charged that there are other causes which

contribute to high levels of nitrate. **SEN. GROSFIELD** asked if current technology is able to detect what kinds of viruses exist. **Mr. Taylor** stated that the need is to engage in issues of grave concern regarding public health. He stated that often he finds himself engaged in issues that do not affect public health. It is his opinion that nitrates have led us astray.

SEN. GROSFIELD asked why the bill only addresses one acre. **REP. FUCHS** charged that one acre is a standard number in Montana.

SEN. MIKE TAYLOR asked for an example of one problem and how long it would take the subdivision committee to fix it. **Mr. Murphy** charged that certain particles slide through nitrate testing. He declared that taking into account sewage affluent and soil samples will lead to answers. These are a few of the issues that the committee wants to study. He gave an example of clay ground with minimal amounts of water flowing through it verses soft soil where water moves quickly. He stated that he would like to see more stringent regulations in those areas. **SEN. TAYLOR** declared that \$10,000 is not something to take lightly. **Mr. Murphy** stated when non-degradation goes into affect it is new developments that have to pay for the new systems, not current homeowners.

SEN. GROSFIELD asked the Sponsor to address why section 3 is in the bill. **REP. FUCHS** explained that section 3, states that a petition cannot be brought if it is not significant under that parameter. **SEN. GROSFIELD** stated that outstanding resource waters are a special category of water not typically found in Montana. **REP. FUCHS** declared that he did not have a problem with removing the language. He stated that the goal of the bill is economic development and affordable housing.

{Tape : 3; Side : B}

Closing by Sponsor:

REP. FUCHS declared there may be confusion on behalf of some of the opponents. He read aloud from the fiscal note and pointed out that the bill does not eliminate nitrate testing under the Sanitation Subdivision Act. He added that it does not eliminate the developers responsibility to provide a quality water source for a development. The bill will implement an affordable housing situation. He encouraged the committee to pass the bill based on common sense. In 1997 similar legislation was brought in the House to do a study. Chairman Knox passed away and the study was not conducted. He stated that the bill recognizes that the single residential source of nitrates is non-significant.

HEARING ON HB 599

Sponsor: REP. DICK HAINES, HD 63, Missoula

Proponents: Thorn Liechty, MT Forest Landowners Association
Karen Liechty, MT Forest Landowners Association
Robert Ethridge, DNRC
Cary Hegreberg, MT Wood Products Association

Opening Statement by Sponsor:

REP. DICK HAINES, HD 63, Missoula, charged that the bill would decrease minimum slash hazards. He professed the bill would help a person within a woody environment clean up around their home without purchasing a permit.

Proponents' Testimony:

Thorn Liechty, MT Forest Landowners Association, stated that the language clarifies the intent of the slash law. It provides landowners an exemption from the hazard reduction agreement for small, non-commercial forest management activities. He offered if a landowner wanted to prune the bushes around their land in order to reduce fire hazards, they would have to purchase a permit. He charged that the clarification would allow the DNRC service foresters to concentrate on personal, face-to-face assistance. The bill does not eliminate the requirement to obtain a burn permit, follow air quality standards and abide by the four foot flame length standard for any generated slash.

Karen Liechty, MT Forest Landowners Association, stated that the bill would help stimulate small landowners into taking an interest in maintaining their land. She professed the clarification should allow the DNRC to focus on other areas of forest productivity.

Robert Ethridge, DNRC, expressed that the bill would help landowners maintain their lands in order to reduce fire hazards. He stated that requiring the landowner to purchase a permit to prune a tree is an unnecessary administrative burden on landowners who routinely clean up their slash beyond department standards. However, people who create slash are not exempt from complying with the states hazard reduction standards. The amendment will help with department workload and not have a negative impact on revenue.

Cary Hegreberg, MT Wood Products Association, labeled the bill as a housekeeping bill in MT hazard reduction law.

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked if the bill would have helped speed up fire clean-up. **Mr. Ethridge** stated that the purpose of the bill is to remove impediments and help landowners clean-up their land. The bill is a small scale concept. The bill would encourage landowners to do fire reduction clean-up on their land.

SEN. ROUSH questioned if there is a set fee for the purchase of a burning permit. **Mr. Ethridge** told him that was a separate issue.

SEN. GROSFIELD stated, according to the statute, they still have to notify the department ten days before they clear. Why is that requirement not eliminated for these minimal hazard situations. **Mr. Liechty** thought the language eliminated the landowner from that level of forest management activity. **SEN. GROSFIELD** questioned if the department would object to an amendment that would eliminate the notification requirement for minimal slash hazard situations. **Mr. Ethridge** declared that section 407 refers to a different type of situation.

Closing by Sponsor:

REP. HAINES declared that the bill is timely because it can be funded in HB 2. He stressed that a permit is still required to burn. He concluded that people did not understand what happened last year. He questioned if the bill would have done anything to help. The bill is designed to simplify clean-up for the landowner.

HEARING ON HB 457

Sponsor: **REP. DICK HAINES, HD 63, Missoula**

Proponents: **Bobbie Rossignal, Self**
Richard Rossignal, Self
Steve White, Self
Bruce Simon, Self
Andy Skinner, HPOA

Opponents: **Bruce Bender, Pulp Works**
Byron Roberts, MT Building Association
Alex Hanson, MT League of Cities and Towns
Jani McCall, City of Billings
Charles Brooks, Yellowstone County
Jim Collins, City of Bozeman

Opening Statement by Sponsor:

REP. DICK HAINES, HD 63, Missoula, informed the committee that current law allows a municipality to impose building codes on areas and citizens outside of the city limits, up to four miles out. Citizens outside of the city object to the building codes because they do not have a say in what the local government does. The concern is once the city expands they would have buildings that do not meet building codes. He charged that the bill requires a vote and gives citizens a voice. He encouraged the committee to not allow the issues of inspection get in the way of their decision.

Proponents' Testimony:

Bobbie Rossignal, Representing herself, informed the committee that her husband was summoned by Missoula County for putting siding on their home without a Missoula City Permit. She declared that her family has been in a legal battle for over two years. She handed out a packet of information that details their legal battle **EXHIBIT(nas60a12)**. She charged that the bill is a non-partisan issue.

{Tape : 4; Side : A}

Dick Rossignal, Representing himself, charged the bill is an ethical issue. He professed if their house was one mile south, the situation would have changed. He submitted a copy of his case summary **EXHIBIT(nas60a13)**.

Steve White, Representing himself, spoke in favor of the bill and submitted written testimony, an article describing his situation and written testimony on behalf of **Ray and Shirlee White EXHIBIT(nas60a14)**.

Bruce Simon, Representing himself, told the committee that **Peggy Trenk, MT Association of Relators,** would like to go on record in support of the bill. He declared that the bill is about citizens rights, not building codes. He charged that the legislature created the statute and they can take it away. He maintained that the state does not enforce the rule, the local cities do. The local cities have decided that they will reach four miles outside of the city. He stated that the cities with extended jurisdiction declared they did not have to obtain citizen or county permission before they enforced the statute. He questioned what is more costly having an election or seeing the erosion of the basic principals of government. He charged that the citizens have the right to govern through their elected officials. Individuals are being ruled by cities who have not

given them a voice. He stated that the bill is about the consent of the government, allowing citizens to have a voice.

Andy Skinner, HPOA, gave an overview of the most recent Helena Growth Policy. He expressed the need for allowing individuals the right to vote. They should not be held to a standard that they do not have a say in.

Opponents' Testimony:

Bruce Bender, Pulp Works, stated Missoula has been refining its building codes within the four mile radius for over thirty years. He charged that they have only enacted what is permitted by the state. He maintained that the codes enforced, are state codes. He argued that areas annexed have fallen under their jurisdiction within the last thirty years.

Byron Roberts, MT Builders Association, charged that builders want to enforce building codes. Extra territorial authority is achieved by basic agreement by both units of government. The city or the county has the authority to enforce building codes. He charged that the bill is only an attempt to eliminate building codes in the fastest growing areas of the state.

Alex Hanson, MT League of Cities and Towns, challenged the current law. He argued that without the cities to enforce building codes there is a potential safety hazard. He stated that SB 242 allows counties to put in building codes as they see fit, in selected areas. He offered a set of amendments for HB 457 **EXHIBIT(nas60a15)** in order to make it look more like SB 242.

Jani McCall, City of Billings, informed the committee that after the last session Billings put together a working group to look at this issue. She charged that the issue can be solved at the local level. Billings created a compromise between the cities and the county. The components the committee came up with were; agreeing upon necessary safety and creating an appeals board that is separate from the city of Billings.

{Tape : 4; Side : B}

She offered, no appeals have been brought before the board.

Charles Brooks, Yellowstone County, charged it is an issue of local control. He argued Billings has created a workable process. The bill is unnecessary legislation. He encouraged the committee to look at code 1-2-112, it may have applicability to the bill.

Jim Collins, City of Bozeman, submitted written testimony and a newspaper article on behalf of **Neil Poulsen, Chief Building official, City of Bozeman**, **EXHIBIT(nas60a16)**.

Informational:

Eric Fehlig, Dept. of Commerce Building Codes Division, submitted a copy of Montana Certified Cities/Counties currently enforcing building codes **EXHIBIT(nas60a17)**. He stated the bill effects eight cities which enforce extra territorial jurisdiction, thirty-nine cities currently enforce building codes. He declared the largest city to not enforce building codes is Dillon.

Questions from Committee Members and Responses:

SEN. BILL TASH inquired if **REP. HAINES** had seen the proposed amendments. He informed him he had not. **SEN. TASH** wondered if he agreed with the counties language. **REP. HAINES** informed him he could not make a decision without looking at the amendments. **SEN. TASH** stated the amendments may be counterproductive. **REP. HAINES** said he would not object to looking at the amendments.

SEN. GROSFIELD asked why it would be better to make the bill identical to SB 242. **Mr. Simon** declared he could not make a decision without seeing the amendments. He charged that the amendments on SB 242 create a circle between the cities and counties. He argued the last appeal with the Billings appeals board was five years ago. He challenged the process is working because nobody uses the system. He argued that the committee is made up of members who were mostly against the bill.

SEN. GROSFIELD asked for the status on SB 242. **Mr. Fehlig** informed him it was scheduled to be heard in the House Committee on Labor and Industry.

SEN. GROSFIELD questioned why elections are necessary if SB 242 amendments are adopted. **Mr. Hanson** charged if the amendments are adopted cities will no longer have jurisdiction in the extended area. The cities will no longer be able to enforce codes even if they had an election. The purpose is to realistically and logically deal with the concerns about representative government. He argued the amendments in SB 242 make the needed connection.

SEN. DALE MAHLUM inquired about **Mrs. Rossignal's** appeals process experience in Missoula County. She stated that there has been no appeals process. Her appeals process has been to buy or not buy the permit and be summoned to court. She proclaimed they are now

being tried in municipal court. **SEN. MAHLUM** asked if Missoula County has an appeal court. **Mrs. Rossignal** told him they do not have an appeals process for this issue.

SEN. ROUSH asked if statewide building codes have been adopted. **Mr. Fehlig** told him there are statewide codes, but there are too many interpretations of the building codes. He added there has been progress between the cities and the state getting together to discuss the matter. The legislature has provided an arena in which common ground can be accomplished.

Closing by Sponsor:

REP. HAINES charged that the bill is not a duck the codes issue. The purpose is to help interpret what they are. He argued, if codes are adopted by the counties, the people in the affected area have to be able to decide if they like the codes or not. He challenged the committee not to get caught up in the rhetoric that was presented. He emphasized the need to give people the right to say how an inspection will be carried out.

{Tape : 5; Side : A}

EXECUTIVE ACTION ON HB 459

Motion: **SEN. GROSFIELD** moved that **HB 459 BE CONCURRED IN.**

Discussion:

SEN. GROSFIELD pointed out that the letter **REP. MOOD** handed out (exhibit 1) clarified the questions raised during the hearing.

Substitute Motion: **SEN. ROUSH** moved that **AMENDMENTS HB045901.AMV EXHIBIT (nas60a18) BE ADOPTED.**

Discussion:

SEN. ROUSH made reference to **REP. MOOD's** letter. He voiced his concerns about the phrase "economically feasible". He warned that keeping the language on page two, line seven of the bill would cause problems for a project. He stated that the requirements for economically feasible are already in law. The bill sets up an agency to get sued by project opponents and proponents. He expressed his concern with allowing citizens to access economic records of a business. He hypothesized that clarifying the language would bring harmony between industry and others.

SEN. KEN MILLER opposed the amendment. He proclaimed that the bill is about the possibility of doing something. He stated that a project may be possible, but not economically feasible. He added that the bill does not put a specific price tag on a project.

SEN. KEN TOOLE spoke in favor of the amendment and asserted economically feasible does tie back to who's paying. He stated that what's economically feasible for one entity may not be for another. He argued that a cost benefits analysis would be appropriate for the bill.

SEN. TASH opposed the amendment and charged that the definitions are already in law. The bill calls for clarification.

SEN. COCCHIARELLA declared that the definition of economically feasible is not well defined. She argued that **REP. MOOD** could not tell her the purpose of the language. She questioned why the committee would consider language that is left open for interpretation by the agencies. She declared that the language muddies the water for future lawsuits. She spoke with contempt that the Yellowstone Pipeline did not happen. She commented that the project kept handing out money, but the alternative they came up with during the study was unaffordable. The language would not fix or enhance the law.

SEN. GROSFIELD agreed on page two, that MEPA is about working with the human environment. He added that the bill asks if the alternative being proposed for a project is economically feasible. He argued that economically feasible is present in numerous laws. He offered the example of classification of waters. He stated that economically feasible is something that is done all of the time. He warned that without the language the bill would be destroyed.

SEN. MAHLUM called for the question.

Substitute Motion/Vote: Substitute motion failed 4-7 with Mahlum, Grosfield, miller, Toole voting aye.

Substitute Motion: **SEN. TOOLE** made a substitute motion **AMENDMENTS HB045902.AMV EXHIBIT (nas60a19) BE ADOPTED.**

Discussion:

SEN. TOOLE declared that the amendment addresses the definition of a project sponsor as described in the Enabling Act. He charged that the language causes the definition to be unclear.

SEN. TASH resisted the amendment because the Enabling Act already identifies school funding from state land projects.

SEN. TOOLE argued the language allows every school district to challenge a project.

SEN. GROSFIELD proclaimed that **REP. MOOD's** letter addresses that particular issue. He resisted the amendment because he believes in local control.

SEN. MAHLUM called for the question.

{Tape : 5; Side : B}

Substitute Motion/Vote: Substitute motion failed 4-7 with Cocchiarella, McCarthy, Roush, Toole voting aye.

Substitute Motion/Vote: **SEN. COCCHIARELLA** made a substitute motion that **AMENDMENT HB045903.AMV EXHIBIT(nas60a20) BE ADOPTED.** Substitute motion carried 11-0.

Substitute Motion/Vote: **SEN. GROSFIELD** made a substitute motion that **HB 459 BE CONCURRED IN AS AMENDED.** Substitute motion carried 8-3 with Cocchiarella, McCarthy, Toole voting no.

EXECUTIVE ACTION ON HB 473

Motion: **SEN. TAYLOR** moved that **HB 473 BE CONCURRED IN.**

Discussion:

Ms. Vandebosch pointed out to the committee that the bill possessed an incorrect title.

Substitute Motion/Vote: **SEN. GROSFIELD** made a substitute motion that **AMENDMENTS HB047303.AMV EXHIBIT(nas60a21) BE ADOPTED.** Substitute motion carried 10-0.

Substitute Motion: **SEN. TAYLOR** made a substitute motion that **AMENDMENT HB047309.AMV EXHIBIT(nas60a22) BE ADOPTED.**

Discussion:

SEN. TAYLOR stated that he realized MEPA is for juries and lawyers. He offered that the amendment provides direction and rules to the bill, along with a balance.

SEN. TOOLE expressed his concern for lack of cooperation between entities who use MEPA. He argued that the amendment does not provide the necessary road map.

SEN. TAYLOR corrected the language on the first line, added the word "sub" to section.

SEN. GROSFIELD maintained that there will be numerous cases where the department would initiate a project. The amendment involves the department in the process, and allows them to make good decisions.

SEN. MCCARTHY questioned if the project sponsor could be the department as well as the entity that submits the request. **SEN. TAYLOR** told her that was correct.

SEN. TASH spoke in favor of the amendment.

SEN. TOOLE inquired if the amendment would eliminate the back-and-forth involved with MEPA. Numerous committee members replied yes.

Substitute Motion/Vote: Substitute motion carried 10-0.

Substitute Motion: **SEN. TOOLE** made a substitute motion that **AMENDMENT HB047302.AMV EXHIBIT(nas60a23) BE ADOPTED.**

Discussion:

SEN. TOOLE informed the committee that the amendment would add language to clarify the regulatory requirements. He was concerned that the language did not exist to protect public health and welfare from possible negative impacts from a project.

CHAIRMAN WILLIAM CRISMORE questioned if **SEN. TOOLE** had an example of that type of situation. **SEN. TOOLE** offered the example of a haul route going out of a mine that passes a school.

SEN. TAYLOR opposed the amendment because it was ambiguous. He argued the language would create more time delays.

SEN. GROSFIELD agreed with **SEN. TAYLOR's** comments. He stated that a lot of the mitigation with a mine gets worked out through a different process. He argued that the language already exists.

SEN. TOOLE argued that he would rather see agencies deal with issues of public health and welfare instead of economic feasibility.

CHAIRMAN CRISMORE commented that a haul route is part of the conditions of the timber sale.

Substitute Motion/Vote: Substitute motion failed 1-9 with Toole voting aye.

{Tape : 6; Side : A}

Substitute Motion: **SEN. TOOLE** made a substitute motion that **AMENDMENT HB047301.AMV EXHIBIT (nas60a24) BE ADOPTED.**

Discussion:

SEN. TOOLE asserted that the amendment was a different concept than the last two. He read aloud the amendment to the committee.

SEN. GROSFIELD objected to the amendment for the same reasons as already stated.

SEN. TASH speculated that the amendment was redundant. **SEN. TOOLE** questioned the objection. **SEN. TASH** declared that the language is part of the permitting process. **SEN. TOOLE** argued that the permitting process was not part of the bill.

SEN. GROSFIELD reported that MEPA is not for conditioning permits, but for gathering information before a decision is made.

SEN. TOOLE confessed that he understood public health and welfare was covered in different areas of the code. Definitions under MEPA do not cover that issue.

CHAIRMAN CRISMORE commented on a TV ad that presumes what will happen if the bill is passed. He charged that it is offensive to say that he is willing to kill more people by supporting these bills. Especially when all of these issues are covered by law. He charged that he would be the first person to kill these bills if there wasn't already a law that covered the issues in question.

SEN. TOOLE expressed his concern that by passing the bills the legislature is weakening environmental protection laws in a weak attempt to create employment.

SEN. MCCARTHY encouraged **SEN. TOOLE** to talk with Greg Petesch about his concerns.

SEN. MAHLUM called for the question

Substitute Motion/Vote: Substitute motion failed 3-8 with Cocchiarella, McCarthy, Toole voting aye.

Substitute Motion: SEN. TOOLE made a substitute motion that AMENDMENT HB047307.AMV EXHIBIT(nas60a25) BE ADOPTED.

Discussion:

SEN. TOOLE surmised that the amendment addresses project sponsor. He expressed his concern that policy will be created that steps around the Land Board.

SEN. GROSFIELD argued the amendment dealt with the same issue already addressed.

SEN. TAYLOR called for the question

Substitute Motion/Vote: Substitute motion failed 2-8 with Cocchiarella, Toole voting aye.

Substitute Motion: SEN. COCCHIARELLA made a substitute motion that AMENDMENTS HB047304.AMV EXHIBIT(nas60a26) BE ADOPTED.

Discussion:

SEN. COCCHIARELLA explained to the committee that she rewrote the second amendment. The intention is to make the language similar to SB 377. She stated that the word "substantial" would create lawsuits.

SEN. GROSFIELD disagreed with the intent of amendment number two.

Substitute Motion/Vote: SEN. GROSFIELD made a substitute motion to SEGREGATE AMENDMENT 1 ON HB047304.AMV BE ADOPTED. Substitute motion carried 10-0.

Substitute Motion: SEN. COCCHIARELLA made a substitute motion that AMENDMENT 2 ON HB047304.AMV BE ADOPTED.

Discussion:

SEN. MCCARTHY asked for clarification. SEN. COCCHIARELLA declared that it was exactly the same as SB 377. The word substantial creates impossible standards.

SEN. GROSFIELD pointed out that the sections deal with two different issues. He stated that the bill talks about alternatives and imposing conditions.

Substitute Motion/Vote: Substitute motion carried 6-5 with Crismore, Cole, Grosfield, Miller, Tash voting no.

Substitute Motion: **SEN. MCCARTHY** made a substitute motion that AMENDMENTS HB047302.ATE **EXHIBIT**(nas60a27) BE ADOPTED.

Discussion:

SEN. MCCARTHY explained that state initiated actions needed to be clarified.

SEN. GROSFIELD stated the amendment was good clarification.

SEN. TAYLOR questioned how the amendment coordinate with previously passed amendments.

Ms Vandebosch informed him it would be a different sub-section. The order does not matter.

SEN. MCCARTHY asked that **Ms Vandebosch** have the freedom to number the sections.

SEN. MAHLUM called for the question

Substitute Motion/Vote: Substitute motion carried 10-0.

Substitute Motion: **SEN. TAYLOR** moved that **HB 473 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. TAYLOR commented that the intention of MEPA is good, but the language of the document is not clear. He stated that the bill will bring MEPA back into a balance.

SEN. ROUSH stated his belief in economic development. He expressed his concern that the revision of MEPA would create lawsuits.

SEN. TOOLE declared that he would not support the bill. He expressed his frustration with weakening environmental laws

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because he does not see how that would result in economic development.

SEN. GROSFIELD stated if there are gaps that show up as a result of the MEPA changes, the Senate can work to fill in those gaps.

CHAIRMAN CRISMORE declared that the EQC should challenge both the environmental and industrial communities. They should point out where changing MEPA has been helpful or harmful.

SEN. TAYLOR stated that business sees Montana as unfriendly. He expressed his hope that voting for these bills would change that impression.

Motion/Vote: Motion carried 7-4 with Cocchiarella, Mahlum, McCarthy, Toole voting no.

The following exhibit was submitted at the end of the meeting

Robert Horne, City-Co. Planning Director, submitted written testimony in opposition to HB 513 **EXHIBIT (nas60a28)**.

ADJOURNMENT

Adjournment: 8:20 P.M.

SEN. WILLIAM CRISMORE, Chairman

MELISSA RASMUSSEN, Secretary

WC/MR

EXHIBIT (nas60aad)